

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

FARM LABOR ORGANIZING
COMMITTEE ET AL.,

Plaintiffs,

v.

JOSHUA STEIN ET AL.,

Defendants,

and

NORTH CAROLINA FARM BUREAU
FEDERATION, INC.,

Proposed Defendant-Intervenor.

Case No.: 1:17-cv-01037

**MOTION FOR RECONSIDERATION BY NORTH CAROLINA FARM BUREAU
FEDERATION, INC.**

Pursuant to Federal Rule of Civil Procedure 59(e), and in the alternative Rules 60(b) and 54(b)¹, proposed defendant-intervenor, North Carolina Farm Bureau Federation, Inc. (“NC Farm Bureau”), by and through undersigned counsel, moves for reconsideration of this Court’s order (D.E. 62) denying NC Farm Bureau’s Motion to Intervene (D.E. 21). In support thereof, NC Farm Bureau is contemporaneously filing a Memorandum of Law in

¹ In conjunction with this filing, NC Farm Bureau will file a Notice of Appeal with the Fourth Circuit. Pursuant to Rule 4(a)(4)(B)(i) of the Federal Rules of Appellate Procedure, this Court retains jurisdiction to dispose of NC Farm Bureau’s Rule 59(e) and Rule 60(b) Motion for Reconsideration. However, if this Court deems a motion under both Rule 59(e) and 60(b) to be improper, NC Farm Bureau moves for reconsideration under Rule 54(b). In such an instance, this Court would lack jurisdiction due to the pending appeal. Accordingly, NC Farm Bureau’s alternative Motion for Reconsideration under Rule 54(b) is made pursuant to Rule 62.1, which permits a court to grant an indicative ruling when the motion would be otherwise barred due to a pending appeal.

Support of Motion for Reconsideration. NC Farm Bureau also shows the Court the following:

1. Plaintiffs, a labor union and union members, filed the Complaint on November 15, 2017. (D.E. 1.) Plaintiffs allege Section 20.5 of the North Carolina Farm Act of 2017 (hereinafter the “Section 20.5”) violates their constitutional rights. On November 20, 2017 Plaintiffs filed a Motion for Preliminary Injunction to enjoin the enforcement of Section 20.5. (D.E. 7.)

2. On January 25, 2018, NC Farm Bureau timely filed a motion to intervene to oppose Plaintiffs’ claims and preserve the protections afforded North Carolina farmers by Section 20.5. (D.E. 21 and 22.) NC Farm Bureau moved for intervention as of right under Rule 24(a) and for permissive intervention under Rule 24(b). Id.

3. On February 5, 2018, Plaintiffs filed a First Amended Complaint replacing Defendant Roy Cooper with Defendant Josh Stein, the North Carolina Attorney General. (D.E. 31.)

4. On March 2, 2018, Defendant Stein filed a Motion to Dismiss the First Amended Complaint. (D.E. 44 and 45.)

5. On August 21, 2018, the Magistrate Judge issued a Memorandum Opinion and Recommendation, recommending the denial of Defendant Stein’s Motion to Dismiss (D.E. 44), the denial of NC Farm Bureau’s Motion to Intervene (D.E. 21), and the granting of Plaintiffs’ Motion for Preliminary Injunction (D.E. 7).

6. NC Farm Bureau filed objections to the Memorandum Opinion and Recommendations on September 4, 2018. (D.E. 59.) Defendant Stein never filed any objections to the Memorandum and Recommendations.

7. On September 20, 2018 this Court adopted the Magistrate's Recommendation and granted Defendant Warren's Motion to Dismiss (D.E. 39), denied Defendant Stein's motion to dismiss (D.E. 44), denied NC Farm Bureau's motion to intervene (D.E. 21), and granted the motion for preliminary injunction (D.E. 34). (D.E. 62.)

8. The Court based its denial of NC Farm Bureau's Motion to Intervene on findings that NC Farm Bureau (1) shared the "same ultimate objective" with Defendant Stein (D.E. 56 p 52; D.E. 62), (2) failed to make a strong showing that Defendant Stein would not adequately represent its interests (D.E. 56 pp 53, 55; D.E. 62), and (3) would not benefit the litigation. (D.E. 56 pp 59-60.)

9. On September 27, 2018, the North Carolina Attorney General's Office posted on its official Twitter account (@NCAGO) a photograph of Defendant Stein addressing a local labor union, with a quote from his remarks. The quote reads, "Unions provide a critical voice to the workers they represent, which benefits both employees and employers. *That's why I have been fighting in the courts to protect your rights.*" (Emphasis added.)

10. On September 27, 2018, Defendant Stein made the exact same post to his personal Twitter account.

11. As set forth in the Memorandum of Law filed contemporaneously herewith, Defendant Stein's recent statements and waiver of certain appellate rights have undermined the basis of this Court's Order denying NC Farm Bureau's Motion to Intervene. He publicly stated, in both his official capacity as the Attorney General of North Carolina and in his personal capacity, that he is presently fighting in court for union rights. Moreover, shortly before making those statements he chose not to object to the Memorandum Opinion and Recommendations, thereby voluntarily waiving any right to appeal certain issues raised therein and allowing the injunction of Section 20.5. These actions underscore that NC Farm Bureau's interests have not been and will not be adequately represented by Defendant Stein, the only remaining defendant in this case.

12. This Court should grant NC Farm Bureau's Motion to Intervene for the reasons outlined in its previous filings (D.E. 21, 22, 43, and 59) and those set forth in the accompanying Memorandum of Law. It would be unjust to conclude that NC Farm Bureau's interests are adequately represented by a party who is simultaneously pledging to fight in court for the rights of its opponent.

WHEREFORE, NC Farm Bureau respectfully requests this court reconsider its Order on NC Farm Bureau's Motion to Intervene and allow Farm Bureau's Motion.

Respectfully submitted this the 18th day of October 2018.

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CERTIFICATE OF SERVICE

I certify that on October 18, 2018, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF system for filing and transmittal of Notice of Electronic filing to the following CM/ECF registrants:

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